IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.222 OF 1996

The Commissioner of Income Tax
Kolhapur .. Applicant.

V/s.

Balasahed Desai SSK Limited,
Daulatnagar .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> 1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that by reconciling the two views expressed by the Supreme Court in the case of CIT V. Bijli Cotton Mills (P) Ltd. (116 ITR 60) on one hand and Chowringhee Sales Bureau P. Ltd. V. CIT. (87 ITR 542), sinclair Murray and Co. P.Ltd. V. CIT (97 ITR 615) on the other, 'the principle that emerges is that, it is not the point at which or the method by which a receipt was collected by a trader that would determine the taxability of the trading receipt as income but nature, object and obligation of the receipt'. Without considering the decision in Bazpur Co-op. Sugar Factory (172 ITR 321) and Pubjab

Distilling industries P. Ltd. v. CIT (35 ITR 519) in such reconciliation ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that 'what is relevant to see is not how the amount was collected and when it was collected, in total disregard of the Supreme Court's decision in Bazpur Co-op. Sugar Factory (172 ITR 321) and Punjab Distilling Industries Pvt. Ltd. (35 ITR 519) ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding, in respect of various funds like Chief Minister's Fund, Hutment Fund, Contribution to Balasaheb Desai Foundation, Y.B. Chavan Memorial Fund, Cane development fund, Drought relief fund etc. that the assessee acted as an agent and collections were made as per the directions of the State Government. For spending them on the purposes specified by the State Government and that the collections were made by way of retaining amount of caneprice payable to the sugarcane growers and hence are not trading receipt liable to tax ?

2. In so far as first two questions are concerned need not be answered by this Court, because answer to Question No.3 takes care of Question Nos.1 and 2. So far as Question No.3 is concerned, all other items except cane development fund is concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as Cane Development Fund is concerned, the issue will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the

case of Siddheshwar S.S.K. Ltd. (supra) as such the said issue stands remitted back to the Tribunal for consideration afresh.

3. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)